I. AB 1127 LEGISLATIVE HISTORY

Assembly Bill 1127 (Chapter 615, Statutes of 1999) represents one of the most significant legislative proposals affecting the Cal/OSHA program since its inception in 1973. Bills of comparable importance include the California Occupational Safety and Health Act (1973), which created the Cal/OSHA Program, and Senate Bill 198 (1989), and which dramatically expanded the requirement that employers establish, implement, and maintain written injury and illness prevention programs. See Labor Code Section 6401.7 (Injury Prevention Program).

Assembly Bill (AB) 1127 was introduced in the California Legislature by Assemblymember Darrell Steinberg (D-Sacramento) on 25 February 1999. AB 1127 was sponsored by the California State Labor Federation, AFL-CIO.

After passage in the Assembly (48 votes for and 28 votes against) and the Senate (25 votes for and 13 votes against) in September of 1999, AB 1127 was approved by the Governor on 5 October 1999 and filed with Secretary of State on the same day.

All the provisions of AB 1127 went into legal effect on 1 January 2000. AB 1127, as enacted, contained twelve provisions which were added to the California Labor Code or amended existing Labor Code sections. These Labor Code sections were 98.7, 6304.5, 6309, 6400, 6423, 6425, 6428, 6429, 6430, 6432, 6434 and 6719. See Appendix A for full text of the chaptered version of AB 1127.

II. SUMMARY OF LABOR CODE AMENDMENTS MADE BY AB 1127

A. Section 98.7

Extends period for an employee to file a Cal/OSHA discrimination complaint with the Labor Commissioner from 30 days to 6 months.

B. Section 6304.5

Permits Title 8 standards to be entered into evidence in civil suits; and makes inadmissible DOSH employee testimony about citation issuance, applicability of Title 8 standards and their expert opinion.

C. Section 6309

1. Expands the scope of employee's representative, whose complaints must be treated as formal by Cal/OSHA, to include an

attorney, health or safety professional, union representative;[1] or representative of a government agency;

2. Requires a determination be made as to the period of time in the future that the complainant believes the unsafe condition may continue; and

3. Requires inspections to be conducted within 24 hours for complaints alleging a serious violation received from a state or local prosecutor.

D. Section 6400

Codifies the Division of Occupational Safety and Health's multi-employer regulation into statute.

E. Section 6423

Increases fines and prison terms penalties for certain Title 8 violations which are charged by a district attorney.

F. Section 6425

Increases fines and prison terms that a court may impose for willful violations causing an employee's death or permanent or prolonged impairment of the body, which are charged by a district attorney.

G. Section 6428

Increases monetary penalty for serious violations from a maximum of $7,000 to $25,000.

H. Section 6429

1. Provides for no penalty adjustment for good faith or history for repeated violations; and

2. Requires that the Division preserve records for not less than seven years.

[1]Although not statutorily defined prior to AB 1127, the Division has always considered a "union representative" to be an "employee representative" for purposes of classifying the complaint as formal or non-formal.

I. Section 6430

1. Increases penalty for failure-to-abate violation from $7,000 to $15,000 a day; and

2. Makes it a crime for employers to submit a false statement of abatement.

J. Section 6432

Eliminates the requirement that the Division prove "employer knowledge" of the presence of a serious violation as a part of its case-in-chief, rather, Section 6432 now provides that a serious violation does not exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation (i.e., converts the absence of actual or constructive knowledge into an affirmative employer defense).

K. Section 6434

Eliminates exemption of public entities from civil penalties (but provides for reimbursement procedures for public schools, colleges and universities under specified circumstances).

L. Section 6719

Reaffirms the Legislature's concern over repetitive motion injuries in the workplace and the Occupational Safety and Health Standards Board's continuing duty to carry out Section 6357. No specific statutory duties are involved.

III. STUDY MEASURES AND 2000 RESULTS AS COMPARED (WHERE POSSIBLE) TO 1999 RESULTS

A. Anti-Discrimination Complaint Filing Period

Section 98.7 extends period for an employee to file a Cal/OSHA discrimination complaint with the Labor Commissioner from 30 days to 6 months. The six-month time limit may be extended for good cause.

1. Study Measure:

   Anti-discrimination complaints filed with DLSE in 1999 vs. number filed with the Division of Labor Standards Enforcement in 2000, sorted by number of days measured from the date of the

occurrence of discrimination act to date of the discrimination complaint filing.

2. 1999-2000 Results

	Total Filed	By 30 Days	30 to 180 Days
1999	178	178	Not applicable
2000	182	Not available	Not available

3. Interpretation

Cal/OSHA discrimination claims rose slightly in 2000, but at the time of this report, DLSE was unable to determine what percentage of claims filed in 2000 were filed after the pre-AB 1127 filing period of 30 days.

B. Use of Title 8 Standards in Civil Proceedings

Pre-AB 1127 -- The prior version of Labor Code section 6304.5 precluded the use of occupational safety and health standards in third party personal injuries proceedings.

Post-AB 1127 -- The current version of this statute permits occupational safety and health standards to be considered, but precludes Division employees from testifying concerning whether or not citations were issued, the application of occupational safety and health standards, and expressing opinions as an expert witness.

1. Study Measures:

With reference to this Labor Code provision, three measures may be helpful:

(1) The number of times Title 8 was introduced in a legal proceeding;

(2) The number of times Division personnel were sworn to testify in a legal proceeding; and

(3) The number of Motions to Quash prepared by the Legal Unit.

2. 1999-2000 Results

	# Times T8 Introduced	# Times DOSH Sworn To Testify	Motions-to-Quash
1999	None	6	13
2000	Unknown	0[2]	4

3. Interpretation

With reference to the first measure, in 1999, Title 8 standards should not have been introduced in any third party personal injury action.[3] Beginning in 2000, occupational safety and health standards could be introduced in any action in which the standard was material and relevant to issues in the case. The Division would not have knowledge concerning the number of times such standards were introduced, unless Division compliance personnel were asked questions pertaining to these standards.

The second measure, the number of times Division personnel were sworn to testify as experts, can be approached somewhat indirectly based upon the number of times the Legal Unit was asked to prepare Motions to Quash. Prior to the year 2000, Division policy was to attempt to quash subpoenas for the trial appearance of Division personnel for any reason. In 1999, as a result of subpoenas for trial appearances served on compliance personnel, 13 assignments for preparation of Motions to Quash were made. With reference to the 13 cases in which the Legal Unit was involved, five or six compliance personnel were required to provide testimony, but to the Legal Unit's knowledge none were asked questions pertaining to occupational safety and health standards or expert opinion matters. (Many Motions to Quash were

[2] Not known in that Division enforcement personnel could testify as percipient witnesses but not as expert witnesses.

[3] A few members of the personal injury bar have stated that Title 8 provisions were successfully introduced in third party actions prior to 2000 based upon diverse theories, such as specific contractual provisions which called for compliance with applicable occupational safety and health standards.

unnecessary in light of settlement of the underlying case before trial).

For the year 2000, Division policy changed to allow compliance personnel to testify, provided that the compliance person was properly subpoenaed and that testimony would be limited to factual determinations as a result of the Division's investigation. In 2000, Motions to Quash filed by the Legal Unit were intended to assure that testimony of compliance personnel was appropriately limited consistent with Labor Code 6304.5. Four assignments for preparation of Motions to Quash were made to assure that testimony would be so limited. To the Legal Unit's knowledge no compliance person was required to answer questions pertaining to application of occupational safety and health standards or matters calling for expert witness opinions in 2000.

C. Cal/OSHA Complaint Inspection Procedures

Section 6309: (1) expands the scope of employee representative, whose complaints must be treated as formal by Cal/OSHA, to include an attorney, health or safety professional and a representative of a government agency; (2) allocates inspection resources first to those complaints where time-is-of-the-essence; and (3) requires inspections to be conducted within 24 hours for complaints of serious violations from state or local prosecutors.

1. Study Measures:

   a. In 1999, the number of "non-formal" complaints logged in by Districts from attorneys, health or safety professionals and representatives of government agencies, as compared to the number of "formal" complaints lodged from attorneys, health or safety professionals and representatives of government agencies in 2000;

   b. In 1999, the time from referral from a state or local prosecutor to Opening Conference, as compared to in 2000, the time from receipt of complaint from a state or local prosecutor to Opening Conference.

2. 1999-2000 Results

a. Number and Types of Complaints by Category

Anecdotal information from a sample of district offices indicates that there has been no noticeable increase in the number of complaints filed by attorneys, health and safety professionals or governmental agency representatives. However, those complaints that were filed in 2000 are now treated as formal complaints in the case of attorneys and health and safety professionals (formerly non-formal complaints), and as formal complaints (formerly referrals in the case of governmental entity representatives). Note: Formal complaints are addressed by an on-site inspection and non-formal complaints may be addressed by an on-site inspection or by a letter or fax to the employer.

b. Time from Receipt of a Referral to Opening Conference (1999) as compared to Time of Receipt of a Complaint from Prosecutor to Opening Conference (2000)

The number of instances in which a state or local prosecutor requests Cal/OSHA to conduct an investigation are so rare that no accurate comparison between 1999 and 2000 can be made. In all instances when a state or local prosecutor has made an investigation request, Cal/OSHA has responded within 24 hours.

3. Interpretation

No noticeable increases in complaints filed by attorneys, health and safety professionals, or representatives of governmental agencies have occurred, but how they are handled by district offices has in that such complaints are now considered to be formal complaints.

D. Multi-Employer

Section 6400 codifies the Division's multi-employer regulation into statute.

1. Study Measures:

a. For 1999 as compared to 2000, the number of multi-employer investigations conducted;

b. The number of multi-employer violations cited (i.e., 8 CCR Section 336.10) as gathered from IMIS and Regional Manager reports to Deputy Chief; and

c. Any legal outcomes post-issuance of contested multi-employer citations.

2. 1999-2000 Results

	Total ME Investigations Initiated	Non-Exposing Employers Cited	Legal Outcomes of Contested Multi-Employer Citations
1999	11	10	6
2000	71	60	3

3. Interpretation

On 31 December 1997, 8 CCR Section 336.10 ("Determination of Citable Employer") went into legal effect. In 1998 and 1999, the Division conducted only a few investigations which were aimed at determining the liability of a non-exposing employer, e.g., a creating employer, a controlling employer or a correcting employer. See 8 CCR 336.10 and 336.11. These regulatory changes were codified into law by amended Labor Code section 6400, which became effective January 1, 2000.

Legal Unit attorneys were involved in six cases involving multi-employer citations issued to creating, controlling, or correcting employers in 1999. Five of the cases were resolved through successful settlement; one case was tried on the merits and was lost (Tutor-Saliba Corporation, Docket Nos. 99-R1D1-3388 and 00-R1D3-110, decided on September 21, 2000).

In the year 2000, Legal Unit attorneys were involved in five multi-employer cases, one of which (involving a citation of a creating employer) resulted in a favorable decision (Fydaq Company, Inc., Docket No. 00-R3D1-1890, decided on April 5, 2001), one of which was successfully settled, one in which the employer withdrew the appeal, and two of which are awaiting legal outcomes.

E. Misdemeanor and Felony Criminal Penalties

Section 6423 increases fines and prison terms for certain Title 8 violations which are charged as misdemeanors by a district attorney. Section 6425 increases fines and prison terms for willful violations causing an employee's death or permanent or prolonged impairment of an employee's body, which are charged by a district attorney.

1. Study Measures:

   a. Progress concerning the California District Attorneys Association's Worker Safety Prosecutor Project Contract with the Department of Industrial Relations;

   b. Qualitative assessment of district attorney interactions since passage of AB 1127, number of meetings with DAs to increase outreach, interest level by DAs in fatality investigations, description of AB 1599 passage; and

   c. Number of cases brought to CDAA OSHA Circuit Prosecutor's attention in 2000.

2. 2000 Results

   a. DIR-CDAA Contract

      An agreement between the Department of Industrial Relations (DIR) and the California District Attorneys' Association (CDAA) was executed on 15 March 2001. The purposed of the Agreement is

      > "to assist prosecutors in rural counties to investigate and prosecute criminal violations of Sections 6423 and 6425 of the Labor Code and other crimes pertaining to the enforcement of laws and regulations requiring a safe workplace in rural counties, where the elected District Attorney has requested such assistance. As a result of the increase in the penalties for criminal violations of Sections 6423 and 6425 of the Labor Code, there is an expanding need to provide Cal/OSHA enforcement training and resources for prosecutors, criminal investigators and district attorneys in rural counties. Many rural district attorneys offices do not have the resources or experience to pursue the enforcement of the provisions of the Labor Code applicable to employee

safety in their counties. This Agreement will provide for funding for two Circuit Prosecutors and an Investigator. The California District Attorneys Association will employ these individuals."

According to definitional criteria contained in the Agreement, the counties in which the CDAA OSHA Circuit Prosecutor employed by the CDAA may be handling Cal/OSHA criminal cases are as follows: San Benito, Lake, Mendocino, Kings, Inyo, Madera, Merced, Stanislaus, Mariposa, Tuolumne, Mono, Alpine, Calaveras, Amador, El Dorado, Placer, Nevada, Sutter, Yuba, Sierra, Colusa, Glenn, Butte, Plumas, Tehama, Shasta, Lassen, Modoc, Sisikiyou, Trinity, Humboldt and Del Norte.

b. DIR-CDAA Interactions

(1) Bureau of Investigations

Bureau of Investigations staff met with CDAA representatives on five occasions regarding development of the Contract. In addition to meetings devoted to development of the contract, Bureau staff met with CDAA and District and City Attorneys representatives in three meetings devoted to cross-training. Bureau representatives and CDAA staff agree that as a result of these interactions, a closer working relationship now exists between the Division and Prosecutor's Offices. During the course of 1999 and 2000, a CDAA representative successfully prosecuted three major cases. The contract with CDAA became effective in March, 2001. Bureau staff believe that discussions and interactions with CDAA and other prosecutors, even before the contract was adopted, reflected an evaluation potential for criminal cases based upon the merits of the case, rather than on resource considerations. Given retention of staff personnel by CDAA to administer the contract, the climate for consideration of Bureau cases based upon the substantive merits should only improve.

(2) Cal/OSHA Civil Enforcement Unit and Public Outreach

During 2001, Kyle Hedum, CDAA OSHA Circuit Prosecutor, has attended several meetings with Cal/OSHA Enforcement Unit managers to exchange ideas on how to effectively implement the DIR-CDAA Agreement.

The CDAA OSHA Circuit Prosecutor has also briefed the Cal/OSHA Advisory Committee on the activities of his office and has met with all District Attorneys in counties served by the CDAA-DIR Project as well as Sheriffs and their investigators in each of the served counties.

In October of 2000, the CDAA hosted an educational conference for district attorneys, their criminal investigators, Cal/OSHA criminal investigators and Cal/OSHA civil investigators. A second educational conference is scheduled for 11 and 12 October 2001.

c. Cases

The CDAA OSHA Circuit Prosecutor is currently evaluating at least one Cal/OSHA investigation arising from the death of an employee(s) for possible criminal indictment. The fatality occurred in 2000 in Butte County. No prosecutorial action has been taken as of this Report.

3. Interpretation

In 2001, the DIR-CDAA interactions have led to a formal agreement between the Department and the District Attorneys' Association to work cooperatively to ensure that the criminal sanctions available under AB 1127 are applied effectively.

F. Civil Penalty for Serious Violation

Section 6428 B increases monetary penalty for serious violations from a maximum of $7,000 to $25,000.

1. Study Measures:

   a. Number of serious violations arising from inspections opened on or after 1 January 2000 and ending 31 December 2000, as compared to those arising from inspections opened in calendar year 1999;

   b. Number of serious violations as a proportion of all violations issued arising from inspections opened in calendar year 2000 as compared to those arising from inspections opened in calendar year 1999; and

   c. Average amount of the civil penalty proposed per serious violation issued from inspections opened in calendar year 2000 as compared to calendar year 1999.

2. 1999-2000 Results

   a. Serious Violations By Year

	Number of Serious Violations Issued
1999	4,461
2000	4,013

   b. Proportion of serious to all violations cited

	Serious Violations	Total Violations	Percent Serious
1999	4,461	20,216	22%
2000	4,013	20,885	19%

c. Average civil penalty for serious violations cited

	Average Penalty
1999	$1,569
2000	$3,780

3. Interpretation

The total number of serious violations cited in 2000 decreased by 10% from the number of serious violations cited in 1999. As a percentage of all violations cited, the percent serious decreased by 3% over the percent serious for 1999. The average proposed civil penalty per serious violation increased by 140% from $1569 to $3780.

G. Repeat Violations and Records Preservation

Section 6429 provides that there be no penalty adjustment for good faith or history for repeated violations; and DOSH must preserve records for not less than seven years.

1. Study Measures:

a. Number of repeated violations arising from inspections opened on or after 1 January 2000 and ending 31 December 2000, as compared to those arising from inspections opened in calendar year 1999;

b. Number of repeated violations as a proportion of all violations issued arising from inspections opened in calendar year 2000 as compared to those arising from inspections opened in calendar year 1999; and

c. Average civil penalty proposed per repeated violation issued from inspections opened in calendar year 2000 as compared to calendar year 1999.

2. 1999-2000 Results

a. Number of repeated violations

	Repeated Violations
1999	156
2000	153

b. Proportion of repeated violations to all violations cited

	Repeated Violations	Total Violations	Percent Repeat
1999	156	20,216	0.77%
2000	153	20,885	0.73%

c. Average proposed civil penalty for repeated violations

	Average Penalty For Repeated Violations
1999	$2,079
2000	$6,425

3. Interpretation

The total number of repeat violations cited in 2000 decreased by 2% over the number of repeat violations cited in 1999. As a percentage of all violations cited, the percent repeat was unchanged from 1999. The average proposed civil penalty per repeat violation increased by 209% from $2,079 to $6,425.

H. Civil Penalty for Failure-to-Abate and Criminal Penalty for False Statement of Abatement

Section 6430 increases penalty for failure-to-abate violation from $7,000 of $15,000 a day; and makes it a crime for employers who submit a false statement of abatement.

1. Study Measures:

   a. Number of failure-to-abate violations arising from inspections opened on or after 1 January 2000 and ending 31 December 2000, as compared to those arising from inspections opened in calendar year 1999;

   b. Number of failure-to-abate violations as a proportion of all violations issued arising from inspections opened in calendar year 2000 as compared to those arising from inspections opened in calendar year 1999;

   c. Average amount of the civil penalty proposed per failure-to-abate violation issued from inspections opened in calendar year 2000 as compared to calendar year 1999; and

   d. Number of referrals to BOI for an employer's submission of an alleged false statement of abatement in 1999 and 2000.

2. 1999-2000 Results

   a. Failure-to-abate violations

	F-T-A Violations
1999	44
2000	49

   b. Proportion of F-T-A violations to all violations cited

	F-T-A Violations	Total Violations	Percent F-T-A
1999	44	20,216	0.22%
2000	49	20,885	0.23%

c. Average civil penalty for F-T-A violations cited

	Average Penalty for F-T-A Violation
1999	$29,265
2000	$36,081

d. BOI Referrals for Submission of False Statement of Abatement

No cases were submitted to BOI from Cal/OSHA Enforcement Unit alleging that an employer had submitted a false statement of abatement under Section 6430.

3. Interpretation

The total number of failure-to-abate violations cited in 2000 increased by 11% over the number of failure-to-abate violations cited in 1999. As a percentage of all violations cited, the percent failure-to-abate was unchanged from 1999. The average proposed civil penalty per failure-to-abate violation increased by 23% from $29,265 to $36,081.

I. Definition of Serious Violation

Section 6432 eliminates the requirement that the Division prove employer knowledge of the presence of a serious violation as a part of its case-in-chief, rather, Section 6432 now provides that a serious violation does not exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation (i.e., converts the absence of actual or constructive knowledge into an affirmative employer defense).

1. Study Measures:

a. Number of serious violations issued in 1999 and 2000 (see Section F. above); and

b. Qualitative report from Legal Unit attorneys regarding effect on adjudication of violations arising from inspections opened in calendar year 2000 which were contested and subject to pre-hearing conference or administrative hearing.

2. 2000 Results and Interpretation

The AB 1127 amendment to Labor Code section 6432 shifts the burden of proof to the employer to demonstrate the absence of actual or constructive knowledge pertaining to the violative condition. A majority of DOSH Legal Unit attorneys have found that this legislative change has not had a material impact with reference to the manner in which cases are presented at hearing or resolved through settlement. However, a minority of attorneys believes that the legislative change has aided their ability to establish the serious classification and allowed the Division to focus on more substantive safety and health issues in either hearings or settlement negotiations.

J. Civil Penalties for Governmental Entities

Section 6434 eliminates exemption of public entities from civil penalties (but provides for reimbursement procedures for public schools, colleges and universities under certain circumstances).

1. Study Measure

Total number of inspections, total violations cited, average civil penalty proposed per violation, violative per inspection ratio, number of other-than-serious violations cited, average civil penalty for other-than-serious violations, number of serious, willful and repeat violations cited, and average civil penalties proposed for serious, willful and repeat violations in 1999 and 2000 for public entities.

2. 1999-2000 Results

	1999	2000
Total Inspections	730	657
Total Violations	1132	872
Average Total Penalty	NA	$908
Violation/Inspection Ratio	1.55	1.33
Other than Serious	842	727
Average OTS Penalty	NA	$244
Serious, Willful & Repeat	290	145
Average SWR Penalty	NA	$4549

3. Interpretation

Prior to the passage of AB 1127, governmental entities (state and local government, school districts, state colleges and universities) were not liable statutorily for monetary civil penalties under 8 CCR Section 336. Quantitatively, there has been a decrease in the total number of inspections of governmental entities in 2000 as compared to 1999 and a slight decrease in the violation per inspection ratio. Qualitatively, the imposition of monetary penalties on governmental entities has increased awareness of occupational safety and health issues among such employers.

K. Repetitive Motion Injuries

Section 6719 reaffirms the Legislature's concern over repetitive motion injuries in the workplace and the Standards Board's continuing duty to carry out Section 6357. No specific statutory duties are involved.

IV. SUMMARY

The 2000 AB 1127 Implementation Report contains preliminary information about the effect that AB 1127 Labor Code amendments have had on the Cal/OSHA Program during the first year post-enactment.

Since the time period of this initial evaluation is short, and since the evaluation reflects the initial implementation of the provisions of AB 1127, no conclusions can be drawn from such a meager data set. It will be important to continue to monitor the impact of AB 1127 changes on the Cal/OSHA program. From annual reports such as this one, as well as from the questions and inquiries that this report will engender, it is expected that, as time passes, an accurate picture can be developed about the effect of AB 1127 changes on workplace safety and health in California.

APPENDIX A

AB 1127 (Statutes of 1999, Chapter 615)

I. Legislative History

Filed with Secretary of State:	October 10, 1999
Approved by Governor:	October 5, 1999
Passed the Assembly:	September 9, 1999
Passed the Senate:	September 7, 1999
Amended in Senate:	September 3, 1999
Amended in Senate:	September 2, 1999
Amended in Senate:	August 25, 1999
Amended in Senate:	August 23, 1999
Amended in Senate:	August 16, 1999
Amended in Senate:	July12, 1999
Amended in Senate:	June 29, 1999
Amended in Assembly:	June 1, 1999
Amended in Assembly:	May 18, 1999

II. Legislative Purpose

An act to amend Sections 98.7, 6304.5, 6309, 6400, 6423, 6425, 6428, 6429, 6430, 6432, and 6434 of, and to add Section 6719 to, the Labor Code, relating to employee safety.

III. Legislative Counsel's Digest

Under existing law, any person who believes that he or she has been discharged or otherwise discriminated against in violation of the Labor Code under the jurisdiction of the Labor Commissioner may file a complaint with the Division of Labor Standards Enforcement within 30 days after the occurrence of the violation.

This bill would extend from 30 days to 6 months that period of time within which a complaint may be filed with the division.

Existing law provides that the provisions of the California Occupational Safety and Health Act of 1973 (hereafter the act) have no application to, may not be considered in, and may not be admitted into, evidence in any personal injury or wrongful death action arising after January 1, 1972, except as between an employee and his or her employer.

This bill instead would provide that neither the issuance of, or failure to issue, a citation by the Division of Occupational Safety and Health (hereafter the division) has any application to, nor may be considered in, nor may be admitted into, evidence in any personal injury or wrongful death action, except as between an employee and his or her employer. The bill also would provide that Sections 452 and 669 of the Evidence Code would apply to the act and the occupational safety and health

standards and orders promulgated under the Labor Code in the same manner as any other statute, ordinance, or regulation.

Existing law provides that if the division secures a complaint from an employee, the employee's representative, or an employer of the employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, the division is required to summarily investigate the complaint as soon as possible, but not later than 3 working days after receipt of a complaint charging a serious violation, and not later than 14 days after receipt of a complaint charging a non-serious violation. Under existing law the division is not required to respond to a complaint if it determines that either the complaint is intended to willfully harass an employer or is without reasonable basis.

This bill would require the division additionally to conduct those investigations if a complaint is received by the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or representative of a government agency. The bill would also provide that the division is not required to respond to a complaint if, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer and is without any reasonable basis.

Existing law provides that every employer, and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or other employee is guilty of a misdemeanor if it, among other things, knowingly or negligently violates any standard, order, or special order, or any of certain provisions of law, or part thereof, authorized by the act, the violation of which is deemed to be a serious violation, as defined.

This bill would also make conforming changes to other provisions of law that impose civil and criminal penalties on employers for violation of specified occupational safety and health requirements. The bill would increase from $5,000 to $15,000 the maximum fine that may be imposed for a violation of those provisions. The bill also would increase the length of incarceration and the monetary penalties that may be imposed for a willful or repeated violation of certain employee safety standards that cause death to any employee, or cause permanent or prolonged impairment of the body of any employee. The bill also would authorize a court to impose a fine in an amount less than certain minimums specified in the bill if the court finds that it is in the interest of justice to do so and states its findings and reasons on the record.

Existing law prohibits civil penalties from being assessed against employers that are governmental agencies for violations of certain employee safety standards.

This bill would repeal that prohibition and require civil or administrative penalties against a school district, community college district, California State University, University of California, or other specified educational entities to be deposited into the Workplace Health and Safety Revolving Fund and refunded or used for specified purposes.

Existing law requires the Occupational Safety and Health Standards Board (hereafter the standards board), on or before January 1, 1995, to adopt standards for

ergonomics in the workplace designed to minimize the instances of injury from repetitive motion. This bill would reaffirm the standards board's continuing duty to adopt those standards.

By making certain violations of employee safety standards by employers subject to criminal penalties, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

IV. Text of Chaptered Version of AB 1127

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 98.7 of the Labor Code is amended to read:

98.7. (a) Any person who believes that he or she has been discharged or otherwise discriminated against in violation of any provision of this code under the jurisdiction of the Labor Commissioner may file a complaint with the division within six months after the occurrence of the violation. The six-month period may be extended for good cause. The complaint shall be investigated by a discrimination complaint investigator in accordance with this section. The Labor Commissioner shall establish procedures for the investigation of discrimination complaints. A summary of the procedures shall be provided to each complainant and respondent at the time of initial contact. The Labor Commissioner shall inform complainants charging a violation of Section 6310 or 6311, at the time of initial contact, of his or her right to file a separate, concurrent complaint with the United States Department of Labor within 30 days after the occurrence of the violation.
(b) Each complaint of unlawful discharge or discrimination shall be assigned to a discrimination complaint investigator who shall prepare and submit a report to the Labor Commissioner based on an investigation of the complaint. The Labor Commissioner may designate the chief deputy or assistant Labor Commissioner or the chief counsel to receive and review the reports. The investigation shall include, where appropriate, interviews with the complainant, respondent, and any witnesses who may have information concerning the alleged violation, and a review of any documents which may be relevant to the disposition of the complaint. The identity of witnesses shall remain confidential unless the identification of the witness becomes necessary to proceed with the investigation or to prosecute an action to enforce a determination. The investigation report submitted to the Labor Commissioner or designee shall include the statements and documents obtained in the investigation, and the findings of the investigator concerning whether a violation occurred. The Labor Commissioner may hold an investigative hearing whenever the Labor Commissioner determines, after review of the investigation report, that a hearing is necessary to fully establish the facts. In the hearing the investigation report shall be made a part of the record and the complainant and respondent shall have the opportunity to present further evidence. The Labor Commissioner shall issue, serve, and enforce any necessary subpoenas.
(c) If the Labor Commissioner determines a violation has occurred, he or she shall notify the complainant and respondent and direct the respondent to cease and desist from the violation and take such action as is deemed necessary to remedy the violation, including, where appropriate, rehiring or reinstatement, reimbursement of lost wages and interest thereon, payment of reasonable attorney's fees associated with any hearing held by the Labor Commissioner in investigating the complaint, and the posting of notices to employees.
If the respondent does not comply with the order within 10 working days following notification of the Labor Commissioner's determination, the Labor Commissioner shall bring an action promptly in an appropriate court against the respondent. If the Labor Commissioner fails to bring an action

in court promptly, the complainant may bring an action against the Labor Commissioner in any appropriate court for a writ of mandate to compel the Labor Commissioner to bring an action in court against the respondent. If the complainant prevails in his or her action for a writ, the court shall award the complainant court costs and reasonable attorney's fees, notwithstanding any other provision of law. Regardless of any delay in bringing an action in court, the Labor Commissioner shall not be divested of jurisdiction. In any such action, the court may permit the claimant to intervene as a party plaintiff to the action and shall have jurisdiction, for cause shown, to restrain the violation and to order all appropriate relief. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and any other compensation or equitable relief as is appropriate under the circumstances of the case. The Labor Commissioner shall petition the court for appropriate temporary relief or restraining order unless he or she determines good cause exists for not doing so.

(d) If the Labor Commissioner determines no violation has occurred, he or she shall notify the complainant and respondent and shall dismiss the complaint. The Labor Commissioner may direct the complainant to pay reasonable attorney's fees associated with any hearing held by the Labor Commissioner if the Labor Commissioner finds the complaint was frivolous, unreasonable, groundless, and was brought in bad faith. The complainant may, after notification of the Labor Commissioner's determination to dismiss a complaint, bring an action in an appropriate court, which shall have jurisdiction to determine whether a violation occurred, and if so, to restrain the violation and order all appropriate relief to remedy the violation. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and such other compensation or equitable relief as is appropriate under the circumstances of the case. When dismissing a complaint, the Labor Commissioner shall advise the complainant of his or her right to bring an action in an appropriate court if he or she disagrees with the determination of the Labor Commissioner, and in the case of an alleged violation of Section 6310 or 6311, to file a complaint against the state program with the United States Department of Labor.

(e) The Labor Commissioner shall notify the complainant and respondent of his or her determination under subdivision (c) or (d), not later than 60 days after the filing of the complaint. Determinations by the Labor Commissioner under subdivision (c) or (d) may be appealed by the complainant or respondent to the Director of Industrial Relations within 10 days following notification of the determination. The appeal shall set forth specifically and in full detail the grounds upon which the appealing party considers the Labor Commissioner's determination to be unjust or unlawful, and every issue to be considered by the director. The director may consider any issue relating to the initial determination and may modify, affirm, or reverse the Labor Commissioner's determination. The director's determination shall be the determination of the Labor Commissioner. The director shall notify the complainant and respondent of his or her determination within 10 days of receipt of the appeal.

(f) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provisions of law.

SEC. 2. Section 6304.5 of the Labor Code is amended to read:

6304.5. It is the intent of the Legislature that the provisions of this division, and the occupational safety and health standards and orders promulgated under this code, are applicable to proceedings against employers for the exclusive purpose of maintaining and enforcing employee safety. Neither the issuance of, or failure to issue, a citation by the division shall have any application to, nor be considered in, nor be admissible into, evidence in any personal injury or wrongful death action, except as between an employee and his or her own employer. Sections 452 and 669 of the Evidence Code shall apply to this division and to occupational safety and health standards adopted under this division in the same manner as any other statute, ordinance, or regulation. The testimony of employees of the division shall not be admissible as expert opinion or with respect to the application of occupational safety and health standards. It is the

intent of the Legislature that the amendments to this section enacted in the 1999-2000 Regular Session shall not abrogate the holding in Brock v. State of California (1978) 8l Cal.App.3d 752.

SEC. 3. Section 6309 of the Labor Code is amended to read:

6309. If the division learns or has reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may, of its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division secures a complaint from an employee, the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative; or representative of a government agency, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint shall be deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints shall be deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to any complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis. The division shall keep complete and accurate records of any complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case. The name of any person who submits to the division a complaint regarding the unsafeness of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise. The requirements of this section shall not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times.

SEC. 4. Section 6400 of the Labor Code is amended to read:

6400. (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.
(b) On multiemployer worksites, both construction and nonconstruction, citations may be issued only to the following categories of employers when the division has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division:
(1) The employer whose employees were exposed to the hazard (the exposing employer).
(2) The employer who actually created the hazard (the creating employer).
(3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer).

(4) The employer who had the responsibility for actually correcting the hazard (the correcting employer).
The employers listed in paragraphs (2) to (4), inclusive, of this subdivision may be cited regardless of whether their own employees were exposed to the hazard.
(c) It is the intent of the Legislature, in adding subdivision (b) to this section, to codify existing regulations with respect to the responsibility of employers at multiemployer worksites. Subdivision (b) of this section is declaratory of existing law and shall not be construed or interpreted as creating a new law or as modifying or changing an existing law.

SEC. 5. Section 6423 of the Labor Code is amended to read:

6423. Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who does any of the following is guilty of a misdemeanor:
(a) Knowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in, or authorized by, this part the violation of which is deemed to be a serious violation pursuant to Section 6432.
(b) Repeatedly violates any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees.
(c) Fails or refuses to comply, after notification and expiration of any abatement period, with any such standard, order, special order, or provision of this division, or any part thereof, which failure or refusal creates a real and apparent hazard to employees.
(d) Directly or indirectly, knowingly induces another to commit any of the acts in subdivisions (a), (b), or (c). Any violation of subdivision (a) is punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.
Any violation of the provisions of subdivision (b), (c), or (d) of this section is punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine. If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars ($150,000).
(e) In determining the amount of fine to impose under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require.

SEC. 6. Section 6425 of the Labor Code is amended to read:

6425. (a) Any employer and any employee having direction, management, control, or custody of any employment, place of employment, or of any other employee, who willfully violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee, is guilty of a public offense punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both that imprisonment and fine; or by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not more than two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; and in either case, if the defendant is a corporation or a limited liability company, the fine may not exceed one million five hundred thousand dollars ($1,500,000).
(b) If the conviction is for a violation committed within seven years after a conviction under subdivision (b), (c), or (d) of Section 6423 or subdivision (c) of Section 6430, punishment shall be by imprisonment in state prison for a term of 16 months, two, or three years, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment,

but if the defendant is a corporation or limited liability company, the fine may not be less than five hundred thousand dollars ($500,000) or more than two million five hundred thousand dollars ($2,500,000).
(c) If the conviction is for a violation committed within seven years after a first conviction of the defendant for any crime involving a violation of subdivision (a), punishment shall be by imprisonment in the state prison for two, three, or four years, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment, but if the defendant is a corporation or a limited liability company, the fine shall not be less than one million dollars ($1,000,000) but may not exceed three million five hundred thousand dollars ($3,500,000).
(d) In determining the amount of fine to be imposed under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require.
(e) As used in this section, "willfully" has the same definition as it has in Section 7 of the Penal Code. This subdivision is intended to be a codification of existing law.
(f) This section does not prohibit a prosecution under Section 192 of the Penal Code.

SEC. 7. Section 6428 of the Labor Code is amended to read:

6428. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

SEC. 8. Section 6429 of the Labor Code is amended to read:

6429. Any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than seventy thousand dollars ($70,000) for each violation, but in no case less than five thousand dollars ($5,000) for each willful violation.
(b) Any employer who repeatedly violates any occupational safety or health standard, order, or special order, or of Section 25910 of the Health and Safety Code, shall not receive any adjustment of a penalty assessed pursuant to this section on the basis of the regulations promulgated pursuant to subdivision (c) of Section 6319 pertaining to the good faith of the employer or the history of previous violations of the employer.
(c) The division shall preserve and maintain records of its investigations and inspections and citations for a period of not less than seven years.

SEC. 9. Section 6430 of the Labor Code is amended to read:

6430. (a) Any employer who fails to correct a violation of any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, within the period permitted for its correction shall be assessed a civil penalty of not more than fifteen thousand dollars ($15,000) for each day during which the failure or violation continues.
(b) Notwithstanding subdivision (a), for any employer who submits a signed statement affirming compliance with the abatement terms pursuant to Section 6320, and is found upon a reinspection not to have abated the violation, any adjustment to the civil penalty based on abatement shall be rescinded and the additional civil penalty assessed for failure to abate shall not be adjusted for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.
(c) Notwithstanding subdivision (a), any employer who submits a signed statement affirming compliance with the abatement terms pursuant to subdivision (b) of Section 6320, and is found not to have abated the violation, is guilty of a public offense punishable by imprisonment in a

county jail for a term not exceeding one year, or by a fine not exceeding thirty thousand dollars ($30,000), or by both that fine and imprisonment; but if the defendant is a corporation or a limited liability company the fine shall not exceed three hundred thousand dollars ($300,000). In determining the amount of the fine to be imposed under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require. Nothing in this section shall be construed to prevent prosecution under any law that may apply.

SEC. 10. Section 6432 of the Labor Code is amended to read:

6432. (a) As used in this part, a "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a violation, including, but not limited to, circumstances where there is a substantial probability that either of the following could result in death or great bodily injury:
(1) A serious exposure exceeding an established permissible exposure limit.
(2) The existence of one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment.
(b) Notwithstanding subdivision (a), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.
(c) As used in this section, "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation.

SEC. 11. Section 6434 of the Labor Code is amended to read:

6434. (a) Any civil or administrative penalty assessed pursuant to this chapter against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions shall be deposited with the Workplace Health and Safety Revolving Fund established pursuant to Section 78.
(b) Any school district, county board of education, county superintendent of schools or charter school community college district, California State University, University of California, or joint powers agency performing education functions may apply for a refund of their civil penalty, with interest, if all conditions previously cited have been abated, they have abated any other outstanding citation, and if they have not been cited by the division for a serious violation at the same school within two years of the date of the original violation. Funds not applied for within two years and six months of the time of the original violation shall be expended as provided for in Section 78 to assist schools in establishing effective occupational injury and illness prevention programs.

SEC. 12. Section 6719 is added to the Labor Code, to read:

6719. The Legislature reaffirms its concern over the prevalence of repetitive motion injuries in the workplace and reaffirms the Occupational Safety and Health Standards Board's continuing duty to carry out Section 6357.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.